

## TERMS & CONDITIONS OF SALE

1. Interpretation
  - a) "Application" means the application by the Customer to the Company for credit.
  - b) "Contract" means the contract formed between the Company and the Customer for the supply of goods and (if applicable) the provision of Credit in relation thereto.
  - c) "Goods" means, products, materials and services provided by the Company at the request of the Customer.
  - d) In this Agreement, unless otherwise indicated by the context:
    - (i) words importing the singular include the plural and vice versa;
    - (ii) an expression importing a natural person includes a body corporate;
    - (iii) a reference to a party includes that party's successors and permitted assigns;
    - (iv) a covenant or agreement on the part of two or more persons binds them severally and jointly.
2. Payment  
Payment for goods must be made by the Customer and received in full by the Company within thirty (30) days of the issuing by the Company of a tax invoice in respect of the Goods.
3. Delivery
  - 3.1 All reasonable efforts to deliver the Goods to the Customer at the time(s) arranged will be made by the Company. Cost incurred at the failure of the Customer to accept the Goods will be borne by the Customer.
  - 3.2 The Company will not take responsibility for any delay in delivery for any reason or the inability of the Company to secure continuation of supply of the Goods.
  - 3.3 Any damage to property on delivery or any damage to the Goods being delivered will not be at the responsibility of the Company.
  - 3.4 The Customer is obliged to inspect the Goods upon delivery as soon as practicable.
  - 3.5 There will be no obligation on the part of the Company to accept the return of the Goods unless required by law.
4. Title
  - 4.1 Legal and equitable title will only pass to the Customer upon full and final payment for the Goods to the Company.
  - 4.2 The Customer will hold the Goods as bailee for the Company until full payment for the Goods including any amount outstanding on account for the Customer is received. The Customer as bailee must hold and maintain the Goods in good condition.
  - 4.3 The Company may at its discretion take possession of the Goods if the Customer defaults.
5. Warranty
  - 5.1 Without limitation to the Customer's non-excludable statutory rights in this regard, the Company warrants that the Goods are of merchantable quality; that subject to 5.2 the Goods are free of manufacturing defects and will remain so for a period of twelve (12) months from the date of shipment of the Goods by the Company to the Customer.
  - 5.2 The Customer agrees that as regards any warranty claim the Customer will when making any such claim provide to the Company a digital photograph and engineering summary in respect of the alleged failure of the Goods.
  - 5.3 Freight charges and any other associated costs for the return of goods to our facility to be borne by customer.
  - 5.4 Any travel costs associated with 'on site' inspection requirements to be borne by customer.
6. Default
  - 6.1 Default of these Terms and Conditions includes any breach by the Customer of these terms, non-payment for the Goods by the due date or any act of bankruptcy or insolvency including the external administration of the Customer.
  - 6.2 Any default of the Customer will enable the Company to claim the return of the Goods without notice or to withdraw credit to the Customer making all monies payable on demand and the Company at its discretion to treat the whole contract as repudiated and sue for breach of contract.
7. Credit
  - 7.1 Credit may be granted to the Customer upon the Application being duly completed and approved by the Company.
  - 7.2 Notice to the Customer will be provided to the Customer confirming the agreement for Credit.
  - 7.3 The Customer must notify in writing to the Company any change in the information provided in the Application or other information provided.
8. Disclaimer  
The Company will not be liable for failure to complete this Agreement to the extent and for so long as performance is delayed because of circumstances beyond the Company's control the failure of a supplier to the Company or the failure of the Company's importation or other arrangements in respect of the Goods.
9. Fit for Purpose
  - 9.1 Except as expressly provided to the contrary, all representations, warranties, terms and conditions in relation to the Goods are excluded to the maximum extent permitted by law.
  - 9.2 The Customer is required to expressly advise the Company of the specific purpose for the Goods.
10. Limitation of Liability
  - 10.1 If the Company is in breach of this Agreement, liability is strictly limited to the value of the relevant Goods, products or material, the cost of replacement of the defective Goods as soon as reasonably practicable or the repair of the defective Goods or the repayment (or allowance) of the invoiced price of the defective Goods.
  - 10.2 The Company's liability for breach of this Agreement does not extend beyond the defective Goods supplied pursuant to the Customer's purchase order or otherwise.
  - 10.3 Where loss or damage is not covered in paragraph 10.1 or 10.2, the Company is not liable to the Customer under statute or rule of law or equity (including negligence or otherwise) for any loss or damage arising out of its supply of the Goods.
11. Risk  
Upon delivery of the Goods all risks pass to the Customer or risks pass upon the passing of title to the Customer whichever is earlier.
12. Use of Logos, trademarks
  - 12.1 The Customer recognises that all intellectual property including the trademarks, registered designs, patents and copyright used on or relative to the Goods are the property of the Company.
  - 12.2 The Customer may only use any logos trademarks or other intellectual property associated with the Goods strictly in accordance with any written permission by or agreement with the Company in this regard.
13. Dispute Resolution – Australian Commercial Disputes Centre Mediation
  - 13.1 If a dispute arises out of or relates to this agreement, or the breach, termination, validity or subject matter thereof, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, the parties to the agreement and the dispute expressly agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation.
  - 13.2 A party claiming that a dispute has arisen must be given written notice to the other parties to the dispute specifying the nature of the dispute.
  - 13.3 On receipt of such notice, the parties to the dispute must within seven (7) days of receipt of the notice seek to resolve the dispute.
  - 13.4 If the dispute is not resolved within seven (7) days or within further period as the parties agree then the dispute is to be referred to ACDC.
  - 13.5 The mediation is to be conducted in accordance with ACDC Mediation Guidelines, which set out the procedures to be, adopted, the process of selection of the mediation and the costs involved and which terms are deemed incorporated.
14. Indemnity  
The Customer indemnifies and will keep indemnified the Company against any loss or damage suffered by the Company as a result of any breach by the Customer of the terms of this Agreement.
15. Purchase Orders Non-cancellable
  - 15.1 The Customer acknowledged that the Purchaser Order is irrevocable and may not be withdrawn or cancelled except with the written consent of the Company and then upon such terms (including as to part payment of the price of the Goods) as the Company may in its absolute discretion determine.
16. Costs  
The Customer shall be liable to the Company for all legal costs (on a solicitor and own client basis) and the costs of any mercantile agents in respect of proceedings for recovery under this Agreement.
17. Severance  
If a provision of this Agreement would but for this clause be unenforceable the provision must be read down to the extent necessary to avoid that result. If the provision cannot be read down it is to be severed without affecting the validity and enforceability of the remainder of this Agreement.
18. Applicable Law  
The laws of the State of New South Wales shall govern this Agreement and the Courts of that State shall have non-exclusive jurisdiction in connection with this Agreement